

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT
- A Summary -

Prior to the September 11, 2001 terrorist attacks, access to U.S. consular offices was far less restricted and difficult than it is today. Foreign affiants with information relevant to U.S. proceedings or transactions and willing to provide assistance could visit the U.S. consular office to finalize their affidavit or statement, in very similar fashion to a person within the U.S. visiting a notary public at a local bank. Due to increased security measures, this relatively routine process became more burdensome and time consuming. Even greater hurdles exist for persons seeking statements from individuals who do not reside near a U.S. consular office. The American Bar Association (ABA) raised these issues and referred them to the Uniform Law Commission in an official report, adopted by the ABA House of Delegates in 2006. The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated by the Uniform Law Commission at its Annual Meeting in 2008 to address this situation and to harmonize state and federal law.

UUFDA affirms the use in state law proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Under the UUFDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the act, then the statement may be used as an equivalent of a sworn declaration. The UUFDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary.

The UUFDA will extend to state proceedings the same flexibility that federal courts have employed for over 30 years. Since 1976, federal law (28 U.S.C. § 1746) has allowed an unsworn declaration executed outside the U.S. to be recognized and valid as the equivalent of a sworn affidavit if it substantially includes the language: declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)

Several states have procedures for allowing unsworn declarations, but the state procedures are not uniform. Further, courts have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings.

Enactment of UUFDA harmonizes state and federal treatment of unsworn declarations. The act alleviates foreign affiants' burden in providing important information for state proceedings, while at the same time helping to reduce congestion in U.S. consular offices and allowing U.S. consular officials to increase focus on core responsibilities. Further, UUFDA will reduce aspects of confusion abroad regarding differences in federal and state litigation practice and help prevent potential negative connotations about cumbersome and inconsistent legal procedure in U.S. court proceedings. It should be enacted in every state.

For further information on the Uniform Unsworn Foreign Declarations Act, please contact Kieran Marion or Katie Robinson at 312-450-6600.